

In the Matter of)
)
Improving Communications Services for) WT Docket No. 11-40
Native Nations by Promoting Greater)
Utilization of Spectrum over Tribal Lands)

⁴ *Improving Communications Services for Native Nations, Notice of Inquiry*, 26 FCC Rcd. 2672, 2695 ¶ 56 (2011) (“NOI”).

nearly every part of the United States, providing “instant, ubiquitous, and reliable coverage.”⁵

To facilitate this coverage, DISH Network urges Commission to reform the Universal Service Fund so that satellite providers can compete directly and equally for universal service support.⁶

Allowing satellite broadband providers direct access to funding will enable them to expend the capital needed to expand capacity and better and more cost-effectively serve unserved and underserved areas, including those on Tribal lands.⁷

DISH Network also agrees with commenters that the Commission should provide additional incentives for licensees to choose to voluntarily expand service to Tribal lands.⁸ The Commission should refrain, however, from imposing new mandates, such as mandatory secondary market negotiations⁹ or a build-or-divest rule.¹⁰ There is no basis to impose mandates

⁵ *Id.* at 2695-96 ¶ 56; *see also* Globalstar Comments at 1 (noting that satellite operators “can efficiently provide connectivity to virtually all Tribal areas, no matter how rural or remote”).

⁶ *See generally* Joint Comments of DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, ViaSat, Inc., and WildBlue Communications, Inc., WC Docket No. 10-90 et al. (Apr. 18, 2011) (“Joint Comments”) (hereby incorporated by reference).

⁷ *See* Joint Comments at i, 2, 5-6, 8, 10. DISH Network also supports the adoption of policies to subsidize the cost of broadband service and subscriber equipment, including satellite equipment. Subsidies are an effective way to increase broadband affordability and adoption by populations most in need, such as Native Nations. *See* Joint Comments of DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, ViaSat, Inc., and WildBlue Communications, Inc., CG Docket No. 11-41, at 4 (Jun. 20, 2011) (hereby incorporated by reference).

⁸ *See* Comments of Verizon Wireless, WT Docket No. 11-40, at 1-2 (May 19, 2011) (“Verizon Wireless Comments”); Comments of CTIA – The Wireless Association, WT Docket No. 11-40, at 1-2, 5-7 (May 19, 2011) (“CTIA Comments”); *see also* Comments of The Blooston Rural Carriers, WT Docket No. 11-40, at 2, 6-7 (May 19, 2011) (“Blooston Comments”). For example, the Commission should consider a Tribal lands construction safe harbor, which could give licensees providing service to Tribal lands more flexible alternatives to meet their construction requirements. *See NPRM*, 26 FCC Rcd. at 2643 ¶ 64. Similarly, enhancements to the Tribal lands bidding credit could provide additional incentives for prospective licensees to choose to provide coverage in Tribal areas. *See id.* at 2643-45 ¶¶ 68-74.

⁹ *See id.* at 2638-40 ¶¶ 45-52 (proposing to require incumbent licensees to negotiate in good faith to lease or partition spectrum over underserved or underserved Tribal lands).

when voluntary solutions are available that have yet to be tried and shown to be ineffective.¹¹

Moreover, such rules could undermine the goal of facilitating service to Tribal lands, by creating an atmosphere of animosity rather than cooperation between licensees and Tribal entities.¹² At a minimum, any build-or-divest rule should be prospective only and should not apply to existing spectrum holders. DISH Network agrees that applying a build-or-divest rule to licenses already granted would represent an unlawful and unfair material change in license terms that would upset the legitimate, investment-backed expectations of existing licensees and undermine confidence in the auction process going forward.¹³

Respectfully submitted,

/s/

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¹⁰ See *id.* at 2640-43 ¶¶ 53-63 (proposing to require incumbents to build or divest spectrum in Tribal lands that remain underserved or underserved once construction benchmarks are satisfied).

¹¹ See Verizon Wireless Comments at 5-6; CTIA Comments at 7-8.

¹² See CTIA Comments at 8. Indeed, Tribal representatives have described a mandatory negotiation process as “unsupportable.” See Comments of The National Tribal Telecommunications Association, WT Docket No. 11-40, at 9 (May 19, 2011).

¹³ See Blooston Comments at 6; Verizon Wireless Comments at 8-9. As Verizon Wireless explained in its comments, “altering the reasonable, investment-backed expectations of a licensee post-auction would raise substantial problems under the Takings Clause and constitute secondary retroactivity, and therefore any build-or-divest rule must apply only to new licenses.” Verizon Wireless Comments at 8-9 (footnotes omitted).